IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL REFERENCE NO. 9 OF 2003

Kamalkant Wamanrao Vitonde
Judge, Labour Court, Thane.

Vs.

Mr. Akhalesh Kumar B. Thakur and anr. Respondents

Mr. S.B. Keswani for Respondent No.1.
Mrs.A.S. Pai, APP for Respondent No.2-State.

CORAM : S.S. PARKAR &
SMT. RANJANA DESAI,JJ.

Date : August 05, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This reference is made under Section 15(2) of the Contempt of Courts Act by Shri K.W. Vitonde, Judge, Labour Court, Thane against Respondent No.1.

2. The allegation is that respondent no.1-contemner used to demand money from his clients who were workmen on the pretext that the amount had to be paid to the Court or was demanded by the Court. It is stated that on 6th May, 2003 at about 11.40 a.m. one workmen by name Ramratan Bansraj Jaiswal, who was the 2nd party in Reference (IDA) No.167/2001 under the Industrial Disputes Act, appeared before the learned Judge and told the court that the respondent no.1-contemner, who was representing him, had demanded and received money

from him on the ground that the court had imposed fine on the workman. Since the allegations were serious in nature, the workman Jaiswal was asked to give statement on oath. As per the said statement the respondent-contemner was representative of Union. Said workman has stated in his statement that on his return from his native village in the month of January, the respondent no.1-contemner had told him that his case had been dismissed and a fine of Rs.2990/- was imposed which had to be deposited in the court and thereafter the case would proceed further and if the amount was not deposited the case would be closed. Accordingly workman had paid Rs.2990/- to the respondent no.1-contemner. The workman has alleged that though he had demanded receipt for the payment of the aforesaid amount from the respondent no.1, receipt was not given to him.

3. Pursuant to the said statement on oath, show-cause notice was issued to the respondent no.1 on 6th May 2003, to which reply was filed by the respondent no.1 on 12th May 2003 which is annexed as Exh."C" to this proceeding. In the said reply the respondent no.1 has denied the allegations and has asked for the permission of the court to cross-examine the workman who had made allegations against him and thereafter

this reference was made to this court some time in November, 2003.

4. Mr. Keswani appearing for respondent no.1 - contemner states that after the show-cause notice was issued, reply was filed requesting for an opportunity to cross-examine the workman. However, no opportunity was given to him. The allegations made by the workman have been denied by the respondent no.1. In this court also an affidavit dated 4th March, 2004 has been filed by the respondent no.1 after the notice was issued to him by this Court. In the said affidavit he has stated that though request was made to the Hon'ble Court to give contemner opportunity to cross-examine the workman-complainant, the same was denied to him. It is argued by Mr. Keswani that after the show-cause notice was issued by the concerned Judge, who has made reference to this court, reply dated 12th May, 2003 was filed by the contemner but the court without giving the contemner any opportunity to cross-examine the workman-complainant or being heard, reference was made to this court. Thus the principle of natural justice was violated.

5. The oral allegations made by the workman-complainant were recorded on oath by the

learned Judge, who has made reference to this court. Before the learned Judge himself the contemner had asked for an opportunity to cross-examine the workman-complainant but that opportunity was denied to him. The learned Judge without hearing the contemner and without even giving opportunity to contemner to cross examine the complainant made reference to this court. The contemner has in his reply filed before the Labour Court as well as before this court denied the allegations made by the workman-complainant. It is word against word. In the contempt proceedings punishment that can be awarded may be even sentence of imprisonment. The respondent no.1 cannot be condemned without being heard or without being given sufficient opportunity to him to demolish the allegations made against him by the workman-complainant. In the circumstances, it would not be desirable to take any action under the provisions of Contempt of Courts Act against the contemner on the mere allegations made orally by the workman-complainant.

6. In the result, the notice issued to the Respondent No.1 - contemner is discharged. It would, however, be open for the complainant to adopt such legal proceedings against the Respondent No.1 for the enforcement of his claim in respect of the alleged

payment of Rs.2990/-, as may be open to him in law.